(Separate Revenue)

File No 55 of 1900 – 1901.

Sls 1 — 2.

SECTION S. R.

FILE No. 55 of 1900

SERIAL No. 1

Excise

REVENUE DEPARTMENT
G.J. No. 2723
OCT 19 0
No Encls
DEWAN'S OFFICE

1900-1901

From

The Excise Commissioner in Mysore.

To

THE SECRETARY TO GOVT. OF MYSORE,

General and Revenue Depts.

Submitted 2d Councillor for orders.

An abstract translation of the draft are put up.

for 20/10/00

Dated 15th October
Despatched 18 do } 1900.
Received

General No. 2269
No. 116
Enclosure No. Vernacular papers and 5 Crime sheets

In reply to

SUBJECT.

Submits crime sheets and Vernacular records regarding certain cases of illicit tapping in which the accused persons were improperly acquitted by the Arkalgud Taluk Magistrate and requests that under section 417 of the Code of Criminal Procedure, the Government advocate may be directed to present an appeal to the Chief Court from the orders of acquittal passed by the said magistrate

References
(to be entered only in the Dewan's Office.)

Rd 20/10/00 2 Exs Submitted for orders.
19.10.00
20/10/00.

No. 2269/116 Enc. Vernacular papers and 5 Crime sheets

Excise Commissioners Office,
Bangalore, 15th October 1900.
18

From,

The Excise Commissioner,
in Mysore.

To,

The Secretary to Government of Mysore
General and Revenue Department

Sir,

In submitting herewith the crime sheets and vernacular records — relating to the marginally noted cases of illicit tapping, I have the honor to state that it is clear from the authenticated copies of the accompanying judgments of the Amildar-Magistrate of the Arkulgud taluk that it has been proved and the accused persons also have admitted that

the

1. Case of illicit tapping for 1899-1900 on the file of the Amildar Magistrate of Arkulgud.
2. Do. do. 97 Dito.
3. Do. do. 100. Dito.
4. Do. do. 101. Dito.
5. Do. do. 102. Dito.

the date trees referred to in the judgments were tapped and toddy was manufac-tured without license in contravention of section 5 of the Excise act XXII of 1881, and the offence is therefore punish-able under section 35 of the said act. But the Taluk Magistrate improperly acquitted the accused persons on the ground that they have long enjoyed the toddy of the trees situated in their lands. Improper or clandestine enjoy-ment for any length of time is no ground for acquitting the accused, while the offence of manufacturing toddy without license has been con-clusively established. Accordingly I beg to solicit that under section

417 of the Code of Criminal Procedure, the Government advocate may be directed to present an appeal to the Chief Court from the orders of acquittal passed by the Amildar-Magistrate of the Arkulgud Taluk.

I have the honor to be,

Sir,

Your most obedient servant,

M Krishnaiah

Excise Commissioner,

in Mysore.

KS

Encl: to 661/

Extract of Sections 5 & 35 of the Excise Act

5

5. No person shall construct, work or possess a distillery, still or brewery, or manuf fermented liquor, in any district ex under a license granted by the Deputy Commissioner by a person authorised by the Deputy Commissioner to grant such license, and in accordance with the con -tions (if any) contained therein

Manufacture of spirit and liquor without license prohibited

35. Whoever in contravention of section 5 construct works or possesses a distillery, sti or brewery, or makes fermented liq shall be punished with imprisonment for a term wh may extend to four months or with fine which may extend to one thousand rupees or with both;

For illegally manufacturing spirit or liquor

And all spirit and liquor made in contrav -tion of section 5, and all materials and implements collected for the purposes of such manufacture, shall b liable to confiscation.

Encls: to S.C.

In the court of the 2nd Class Magistrate of the
Ankalgud Taluk

Criminal Case No: 98 of 1899-1900
Dated 1st May 1900.

Present:- Mr. Krishnappa 2nd Class Magistrate

Complainant:- (Government) Excise Supervisor ~~Kalatta~~
Vasudevachar.

Accused :- Kulavadi Arji Ranga residing in Ganjal
-gud Basavanahalli

Judgment

The accused was charged under sections 5 and 35 of the Excise Act for having tapped 10 toddy yielding trees standing on his land without obtaining any licence under the provisions of the Act

The following witnesses were examined for prosecution.

Excise Supervisor Vasudevachar
Ganjalgud Shanbhogue Soobbiah
Patel Dyavanna

The exhibit A. (Mahajar) was also produced
A formal charge has not been framed as it is a summons case.

The accused pleads guilty but states that he and other 4 Kulvadies were in the enjoyment of the inam land and ~~that~~ that they have been also

utilising

the toddy drawn from the date tree growing on that land, for drinking purposes from a long time, in accordance with certain orders (produced before the Court) passed when Mr Kumaraswamy was the Amildar. The accused solicits that the concession then granted may be continued.

The witnesses for defence were also examined, as also exhibits B (endorsement granted in 1874) & C (copy of order No: 167).

The exhibit B was examined. It is an order issued by the Taluk Office in 1874 and states that in accordance with the orders received from the District Office, Sattegauda should not interfere with the trees situated on the border of the Inam land of Kulvadis and that Kulvadis should not interfere with the trees on the bank of the tank and that effect should be given as originally settled.

The exhibit C (which is only an unauthenticated copy) is an endorsement given on the complaint made by the then toddy contractor that the Kulvadis object to their trees being tapped, and state that pending Survey Settlement, the Deputy Commr could not interfere with the existing practice.

The above orders could not however be relied upon by the accused ~~in the face of the~~ in the face of the introduction of the Excise Act in 1885. ~~From the above evidence it is clear~~

The above orders cannot be relied upon by the accused in the face of the introduction of the Excise Act in Oct 1885. But considering the long and uninterrupted enjoyment ~~of the~~ by the Kulvadis of the right referred to in the exhibits B & C, the Superintendent ought to have called for the papers with the accused and submitted the matter to the decision of the Deputy Commissioner.

The accused cannot therefore be said to have committed the offence with which he has been charged, ~~with~~ and the exhibits B & C should be forwarded to the Amildar for settlement of the question on the revenue side.

Judgments in other cases are similar to the above one.

Draft to be approved & ordered

Read :—

Letter no. 2269/16 dated 16/18 th October 1900 from the Excise Commr. in Mysore, forwarding Crime sheets &c regarding certain cases of illicit tapping of toddy trees in which the accused persons were improperly acquitted by the Arkalgud Taluk magistrate and requesting that under Section 417 of the Code of Criminal proceedure, the Government Advocate may be directed to present an appeal to the Chief Court.

SECTION L A
FILE No. 55 of 1900
SERIAL No. 2

No: 3876-7 & 24/10/00
Ex 166

Order therein :—

Under the circumstances represented by the Excise Commissioner, the Government Advocate is requested to

to present an appeal to the chief court against the order of acquittal passed by the magistrate of Arkalgud in ~~the~~ criminal cases nos 98, 99, 100, 101 & 102 of 1899-1900 on the file of his court.

Any instructions connected with the case may be obtained from the Excise Commr direct.

21/10/00 Secretary

20/10/00

To
The Excise Commr
" Govt Advocate ~~with~~ V.P.
" Crime sheets.

No. 3376-7 dt 24/10/00.
Ex 166.